

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD STEWART,

No. Civ. S-05-0458 RRB KJM

Petitioner,

Memorandum of Opinion
and Order

v.

M. SHEPHERD,

Respondent.

Petitioner Edward Stewart ("Petitioner") is a state prison inmate proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging the Governor's decision to reverse¹ a decision by the Parole Board finding him

¹ Respondent M. Shepherd ("Respondent") notes that Magistrate Judge Mueller mistakenly characterized the Governor's decision as a parole "recission" instead of a parole "reversal." Because Respondent is correct in this regard, see In re Capistran, 107 Cal.App.4th 1299, 1304-05 (2003), the court will refer to the Governor's decision as a "reversal" rather than a "recission."

1 suitable for early release on parole.² On October 18, 2007,
2 Magistrate Judge Mueller issued an order directing the parties
3 to expand the record to include all the materials the Governor
4 considered in deciding to reverse the Parole Board's finding
5 that Petitioner was suitable for early release on parole. The
6 order was issued pursuant to Rule 7(a) of the Rules Governing §
7 2254 proceedings on the basis that the additional materials were
8 germane to the issue before the court and their review necessary
9 "[i]n order to determine whether the Governor's determination
10 comports with the 'some evidence' standard." Respondent now
11 moves for reconsideration of this order pursuant to Local Rule
12 72-303(c) on the ground that a review of the entire record is
13 improper under both the Antiterrorism and Effective Death
14 Penalty Act ("AEDPA"), 28 U.S.C. § 2254(d)(1), and the "some
15 evidence" test set forth in Superintendent v. Hill, 472 U.S. 445
16 (1985).

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20 Under Local Rule 72-303(f), a magistrate judge's order
21 shall be upheld unless it is "clearly erroneous or contrary to
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24 ² In response to Petitioner's petition, Respondent filed an
25 answer along with the following exhibits: (1) Exhibit A, the
26 abstract of the judgment from Petitioner's 1981 murder
27 conviction; (2) Exhibit B, the Sacramento County Superior
28 Court's decision on Petitioner's state habeas petition; (3)
Exhibit C, the March 13, 2002 transcript of Petitioner's parole
hearing; (4) Exhibit D, a portion of the probation report; and
(5) Exhibit E, the Governor's Indeterminate Sentence Parole
Release Review.

1 law." Local Rule 72-303(f) (E.D. Cal. 2005). After careful
2 consideration of Respondent's brief and the magistrate's order,
3 the court finds that the magistrate's ruling was not "clearly
4 erroneous or contrary to law." Accordingly, Magistrate Judge
5 Mueller's October 18, 2007 order is AFFIRMED.
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7 IT IS SO ORDERED.

8 ENTERED this 13th day of November, 2007.

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10 s/RALPH R. BEISTLINE
United States District Judge
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